

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HERMAN L. FRYAR

PLAINTIFF

V.

CIVIL ACTION NO. 3:97CV225-B-A

CITY OF RIPLEY, MISSISSIPPI

DEFENDANT

MEMORANDUM OPINION

The issue of the proper amount of attorney's fees and expenses to be awarded to the plaintiff pursuant to 42 U.S.C. § 1988 is before the court.

The plaintiff seeks an award of attorney's fees in the sum of \$19,710.00 and expenses in the sum of \$441.55. The plaintiff has submitted the affidavit of his attorney, Michael D. Cooke, along with an itemization of services and fees. In response, the defendant asserts that the plaintiff is not the prevailing party and, therefore, is not entitled to attorney's fees. In the alternative, the defendant asserts that the court should grant attorney's fees in a nominal and reasonable amount commensurate with the plaintiff's insignificant relief or in accord with the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

Pursuant to 42 U.S.C. § 1988, the court is authorized to allow a prevailing party in a civil rights action to recover a reasonable attorney's fee as part of the costs. The court finds that the plaintiff is the prevailing party. The court's order requiring the City of Ripley to offer the plaintiff's former position to the plaintiff in the future if the City recreates the former position, constitutes a partial victory. The plaintiff sought injunctive relief against the defendant, and this order provides for the potential of such relief. Since the plaintiff qualifies as a prevailing party, the plaintiff is entitled to recover reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

Attorney's Fees

Upon a finding that the plaintiff is the prevailing party, the defendant alternatively requests the court to reduce the plaintiff's attorney's fees commensurate with the plaintiff's degree of success or in accord with the Johnson factors. The defendant contends that the court may allow low fees or no fees without reciting the Johnson factors based on Farrar v. Hobby, 506 U.S. 103, 121 L. Ed. 2d 494 (1992). The Supreme Court has held that "[i]n some circumstances, even a plaintiff who formally 'prevails' . . . should receive no attorney's fees at all." Farrar v. Hobby, 506 U.S. at 115, 121 L. Ed. 2d at 505. Since the plaintiff in this cause did in fact achieve more than a nominal victory, as described in Farrar, the court will consider the Johnson factors in determining a reasonable amount of attorney's fees.

In light of the twelve factors set out in Johnson v. Georgia Highway Express, Inc., the court must determine "a lodestar figure equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work" and adjust the lodestar figure to reflect any factors not otherwise subsumed in the lodestar calculation. Nisby v. Commissioners Court of Jefferson County, 798 F.2d 134, 136-37 (5th Cir. 1986); Jackson v. Color Tile, Inc., 638 F. Supp. 62, 64 (N.D. Miss. 1986), aff'd 803 F.2d 201 (5th Cir. 1986). Once the lodestar is calculated, the court must address its reasonableness as a whole. Hensley v. Eckerhart, 461 U.S. 424, 434, 76 L. Ed. 2d 40, 48 (1983). After considering the Johnson factors, the court may adjust the lodestar upward or downward. League of United Latin Am. Citizens v. Roscoe Indep. Shc. Dist., 119 F.3d 1228, 1232 (5th Cir. 1997).

(A) Number of hours reasonably expended:

The plaintiff's attorney submitted an affidavit showing an itemization reflecting a total of

131.4 hours of work performed during a period of approximately two years. The court finds that the affidavit set forth, in sufficient detail, the nature of the work undertaken and time expended.

As a result of the work on this case, the plaintiff brought claims of the defendant's violations of both the Age Discrimination in Employment Act (ADEA) under 42 U.S.C. § 621 and Title VII of the Civil Rights Act of 1964 under 42 U.S.C. § 2000(e). The court did not find a violation by the defendant on the ADEA claim, but did find that the defendant violated 42 U.S.C. § 2000(e). The Fifth Circuit has held that it is "appropriate that attorney's fees be awarded only for the work on the issue on which the plaintiff was successful." Wilson v. Taylor, 658 F.2d 1021, 1035 (5th Cir. 1981). The plaintiff prevailed on only one of the two claims. Therefore, without precise statements in the affidavit of the plaintiff's attorney stating the itemization of time spent on each claim, the court will apply one-half of the 131.4 hours indicated toward the successful section 2000(e) claim. Thus, the adjusted number of hours reasonably expended in the prevailing claim is 65.7 hours.

(B) Hourly rates:

The plaintiff's attorney, who is a frequent practitioner in the Northern District of Mississippi, seeks an hourly rate of \$150 for services rendered in this action. The court finds that the attorney's affidavit supports the aforementioned rate as the normal and usual rate charged for work performed in federal court cases. The court further finds that the proposed hourly rate is reasonable and customary and should be used in the calculation of the lodestar amount by multiplying this rate of \$150 per hour by the compensable hours expended, 65.7 hours, to arrive at a lodestar amount of \$9,855.00 for attorney's fees.

(C) Adjustment to the lodestar amount:

In addressing the twelve Johnson factors, the court finds as follows:

- (1) The time and labor required: The court has considered this factor in determining the appropriate number of hours reasonably expended and the appropriate hourly rate.
- (2) Novelty and difficulty of the questions: The plaintiff concedes that this cause did not present novel or complex questions, thus this factor does not warrant an adjustment to the lodestar amount.
- (3) The skill requisite to perform the legal services properly: Although this cause may have required greater than average skill, in that 42 U.S.C. § 2000(e) law is a specialized field, the court has considered this factor in determining the appropriate hourly rate.
- (4) The preclusion of other employment due to acceptance of this case: The court finds that this factor does not warrant adjustment of the lodestar.
- (5) The customary fee: This factor is subsumed in the lodestar as the hourly rate. The aforementioned hourly rate is in accordance with the prevailing rates in the community.
- (6) Whether the fee is fixed or contingent: The court finds that this factor does not warrant adjustment of the lodestar.
- (7) The time limitations imposed by the client or the circumstances: The court finds that this factor does not warrant adjustment of the lodestar.
- (8) The amount involved and the results obtained: The court has considered this factor in determining that the plaintiff was considered the prevailing party in the action and in determining the number of hours reasonably expended. The court has previously discussed the proposition that the plaintiff succeeded only on the 42 U.S.C. § 2000(e) claim, and not on the ADEA claim. This success was limited to the injunctive order that if the plaintiff's prior position was re-created, the plaintiff would be entitled to the position. However, this action did create a mere partial victory for the plaintiff in this claim against the defendant and, as such, the court finds that this factor of the

amount involved and the results obtained weighs substantially in the determination of the reasonableness of the award of attorney's fees to the plaintiff.

(9) The experience, reputation, and ability of the attorney: The court has considered this factor in determining the appropriate hourly rate.

(10) The "undesirability" of the case: The plaintiff's attorney concedes that this cause was not undesirable, except that cases against local public officials in a small town and rural area are generally unpopular with the local populace. Upon due consideration, the court finds that this factor does not warrant adjustment of the lodestar.

(11) The nature and length of the professional relationship with the client: The court finds that this factor does not warrant adjustment of the lodestar.

(12) Awards in similar cases: The plaintiff submitted evidence of awards of attorney's fees in cases similar to this one, but failed to provide sufficient evidence to warrant an enhancement of the lodestar. The court therefore finds that this factor does not justify adjustment to the lodestar amount.

Upon due consideration of each of the Johnson factors, the court concludes that a substantial downward adjustment to the lodestar total of \$9,855.00 is required, and the court will reduce the lodestar amount by eighty percent (80%). Application of this eighty percent reduction of the lodestar amount produces a final award of attorney's fees of \$1,971.00.

Expenses

The expenses stated in the plaintiff's attorney's affidavit did not adequately reflect in which claim, either the 42 U.S.C. § 2000(e) or ADEA, the expenses were involved. Accordingly, the court will also apply one-half of the \$441.55 in expenses toward the successful 42 U.S.C. § 2000(e) claim. After this adjustment, the final amount of reasonable expenses totals \$220.78.

Interim Fee and Time to Supplement Attorney's Fees

The plaintiff has requested an award of an interim fee, and also to allow the plaintiff to supplement the fee request upon any subsequent motions or appeals in this case. This court finds that the attorney's fees awarded herein shall be found to fully compensate the plaintiff for the attorney's fees, unless any further actions are taken by the defendant. Upon such further actions by the defendant, the plaintiff would be allowed to supplement this attorney's fee motion, which would be strictly reviewed by this court.

Conclusion

The court finds that the plaintiff is the prevailing party and therefore is entitled to an award of attorney's fees under 42 U.S.C. § 1988 in the amount of \$1,971.00, plus \$220.78 for expenses totaling \$2191.78. An order will issue accordingly.

THIS the ____ day of September, 1999.

NEAL B. BIGGERS, JR.
CHIEF JUDGE